

Before the Board considers the issues raised by respondent, it must first determine whether it has jurisdiction to consider this matter. K.S.A. 44-534a limits appeals from preliminary hearings to instances where disputes involving certain jurisdictional issues are brought before the Board. These jurisdictional issues include whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain

defenses apply. A dispute regarding a respondent's entitlement to schedule an independent medical evaluation under K.S.A. 44-515 is not contained in the jurisdictional issues listed in K.S.A. 44-534a.

An appeal may also be taken if it is alleged that the Administrative Law Judge exceeded his or her jurisdiction in granting or denying the relief requested at preliminary hearing. Respondent contends the Administrative Law Judge exceeded his jurisdiction in denying its opportunity for an independent medical evaluation under K.S.A. 44-515.

As was pointed out by the Administrative Law Judge, K.S.A. 44-515(a) does allow for independent medical examinations to be scheduled by the employer. However, these examinations are "at any reasonable time and place by any one or more reputable health care providers, selected by the employer . . . ." In this instance, claimant has already been examined by respondent's and claimant's chosen doctors. Further, the Administrative Law Judge had referred claimant for a court-ordered independent medical evaluation. Respondent then determined that three additional evaluations, in three separate towns many miles apart, were necessary. The Administrative Law Judge, in part, disagreed.

It should be noted the Administrative Law Judge did not entirely eliminate respondent's right to request an examination under K.S.A. 44-515. But rather the court limited respondent's right to request an examination to one examination, which the court instructed should be coordinated with claimant's counsel in order to have as little impact as possible on claimant's new job. The Order also states that if respondent, in the future, feels another examination is necessary, then the court will provide an additional court-ordered independent medical examination with Edward J. Prostic, M.D.

While respondent argues it is being denied its statutory rights of discovery, that is not found to be true in this instance. The Administrative Law Judge is merely limiting the number of examinations claimant can be subjected to in this matter. This is well within the Administrative Law Judge's authority and does not exceed the Administrative Law Judge's jurisdiction in this matter. The Board finds neither K.S.A. 44-534a nor K.S.A. 2001 Supp. 44-551 were violated. The Board, therefore, does not have jurisdiction to consider this matter on an appeal from a preliminary hearing. Respondent's appeal from the Order of Administrative Law Judge Jon L. Frobish of March 6, 2003, should, therefore, be dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated March 6, 2003, remains in full force and effect, and the appeal of the respondent from that Order should be, and is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 2003.

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BOARD MEMBER

c: Steven R. Wilson, Attorney for Claimant  
Ronald J. Laskowski, Attorney for Respondent  
Jon L. Frobish, Administrative Law Judge  
Director, Division of Workers Compensation